

and land management necessary to maintain new populations in: (1) Areas where populations previously occurred if suitable habitat remains and (2) other suitable habitat within the natural range of the species.

(3) Some Wasatch Front spotted frog populations are notably small in size and vulnerable to risks of detrimental genetic processes (inbreeding, loss of genetic diversity) and demographic uncertainty. Springville Hatchery/T-Bone Bottom population is particularly vulnerable based on its current size and decreasing trend. Actions should be taken to augment or through some other process, increase the size of this population. Furthermore, the current trend should be evaluated to determine if specific land or water use activities are exacerbating the decrease. If specific threats are identified, priority should be placed on reducing these threats such that the population would remain secure into the future.

#### References Cited

A complete list of all references cited is available upon request from the Utah Field Office (see **ADDRESSES** above).

#### Author

The primary authors of this document are Jessica Gourley and Laura Romin (see **ADDRESSES** above).

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 23, 2002.

**Steve Williams,**

*Director.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 010501108-2202-02, I.D. 040502B]

#### Endangered and Threatened Species; Final Determination on a Petition to Designate Critical Habitat for the Bering Sea Stock of Bowhead Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** NMFS received a petition on February 22, 2000, requesting that

portions of the U.S. Beaufort and Chukchi Seas be designated as critical habitat for the Western Arctic stock (which is also referred to as the Bering-Chukchi-Beaufort stock, among other names) of bowhead whales, *Balaena mysticetus*, under the Endangered Species Act (ESA). Under the ESA, the designation of critical habitat for species listed prior to 1978 is discretionary. NMFS is not proposing designation of critical habitat for this population of bowhead whales for the following reasons: (1) the decline and reason for listing the species was overexploitation by commercial whaling, and habitat issues were not a factor in the decline; (2) there is no indication that habitat degradation is having any negative impact on the increasing population in the present; (3) the population is abundant and increasing; and (4) existing laws and practices adequately protect the species and its habitat.

**ADDRESSES:** Requests for copies of this determination should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

#### FOR FURTHER INFORMATION CONTACT:

Bradley Smith, Alaska Regional Office, NMFS, Anchorage, Alaska, (907) 271-5006; Michael Payne, Alaska Regional Office, NMFS, Juneau, AK, (907) 586-7236, or Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713-2322, ext. 105.

#### SUPPLEMENTARY INFORMATION:

#### Background

*Listing Under the ESA:* Bowhead whales were listed as endangered under the Endangered Species Conservation Act, the predecessor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). The species was then listed as endangered under the ESA in 1973. The principal cause of the decline of bowhead whales, which prompted its listing, was commercial whaling. Factors related to habitat have not been identified as a factor in the decline of the species. Critical habitat has not been designated previously for bowhead whales.

*Status and Distribution:* Five stocks of bowhead whales occur in Arctic and subarctic waters of the northern hemisphere. The Western Arctic stock of bowhead whales is the largest of these stocks, and occurs in the Bering, Chukchi, and Beaufort Seas. This stock was reduced by commercial whaling in the late 19th and early 20th centuries from an estimated original population size of 10,400-23,000 whales to only several thousand whales by 1910. The

best available population estimate for this stock is 8,200 animals and is based upon a survey in 1996. The annual rate of population increase is estimated to be 3.2 percent. A comprehensive survey of the Western Arctic stock of bowhead whales was conducted in the spring of 2001 near Barrow, AK. While the analyses from this survey are not yet completed, preliminary information indicates that their abundance has continued to increase.

Bowhead whales are seasonal residents in the Chukchi and Beaufort Seas. The summer habitat for this stock occurs primarily in Canadian waters off the McKenzie River Delta. They migrate from west to east in spring, and return in fall. Most of the stock is believed to winter in the central and western Bering Sea along the ice front and in irregular areas of open water within the ice called polynyas.

Mating is believed to take place in late winter and spring, perhaps continuing through the spring migration. Each year calving occurs as early as March and as late as August; however, most calving occurs from April through early June during the period of migration.

Bowhead whales feed almost exclusively on zooplankton. Bowhead whales feed in summer in the Canadian Beaufort Sea and the Amundsen Gulf area. Foraging also occurs during the fall migration throughout the Alaskan Beaufort Sea. Feeding locations may vary between years. The majority of whales harvested during fall at Barrow, AK, have food in their stomachs. In September 1998 bowhead whales were observed feeding along the Alaskan coastline near and east of Kaktovik. Most bowhead whales harvested at Kaktovik have food in their stomachs. Studies in the eastern Beaufort Sea indicate that whales also forage over the inner continental shelf. Local knowledge has also shown that the waters around the barrier islands along the Beaufort Sea coast are an important foraging area for bowhead whales. Several sources of man-induced activities impact, or may impact, bowhead whale populations. Bowhead whales are harvested by Alaskan Natives in the Beaufort, Bering, and Chukchi Seas. Annual subsistence take levels averaged 37 whales per year from 1990-2000. In addition to the subsistence harvest, other human activities may contribute to the total mortality. Commercial fishing occurs in the Bering Sea and elsewhere throughout the range of this stock. Interactions between bowhead whales and fishing gear is not thought to be common, however, bowhead whales with ropes caught in their baleen or

around their peduncle, and with scarring caused by rope entanglement, have been reported from the animals taken in the subsistence harvests. The North Slope Borough has also documented three confirmed ship strike injuries among 236 bowhead whales taken in the subsistence hunts.

Noise in the marine environment is also increasing with increased industrialization of the Alaskan Arctic, and may effect these whales to an unknown degree. However, there is insufficient evidence at this time to indicate any cumulative or long-term affect on bowhead whales as a result of anthropogenic noises in their Arctic environment. Further NMFS is unaware of any evidence that habitat alteration has had any impact on the recovery of this stock.

*The Petition:* On February 22, 2000, the Center for Biological Diversity and the Marine Biodiversity Protection Center petitioned NMFS to designate critical habitat for the Western Arctic stock of bowhead whales. The petition requested that the designation include waters of the Chukchi Sea east of 158 degrees W. Long, and the Beaufort Sea between Point Barrow, AK, and the Canadian border, from mean high tide to approximately 170km offshore.

Critical habitat is defined in the ESA (16 U.S.C. 1532(5)) as the specific areas on which are found the physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. The 1978 amendments to the ESA established the current criteria for designating critical habitat, which provide, "Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established..." (16 U.S.C. 1532(5)(B)). Therefore, designating critical habitat for species listed prior to 1978 is a discretionary action for NMFS.

Under the Administrative Procedure Act, 5 U.S.C. 553(e) provides, "Each agency shall give an interested person the right to petition for the issuance, amendment or repeal of a rule." NMFS regulations in 50 CFR 424.14(d) address petitions to designate critical habitat: "Upon receiving a petition to designate critical habitat... the Secretary shall promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations and take appropriate action." NMFS found that the petition contained substantial scientific information indicating that the petitioned action may be warranted and

published a notice requesting comments on May 22, 2001 (66 FR 28141).

### Response to Comments

NMFS received comments from the following organizations during the 90 day comment period: British Petroleum Exploration-Alaska, the Alaska Eskimo Whaling Commission (AEWC), the Inupiat Community of the Arctic Slope, LGL Ltd. Environmental Research Associated, the Alaska Oil and Gas Association, Phillips Petroleum-Alaska, Incorporated, the Minerals Management Service (MMS), and the Center for Biological Diversity. NMFS also received comments on the petition from several individuals. Following is a summary of the comments received and NMFS' response.

*Comment 1:* Several commenters suggested that the petitioned action is not warranted for the following reasons: The U.S. Beaufort Sea is no more important to the bowhead whale than other areas throughout its range; the Bering/Chukchi stock of bowhead whales is large and increasing in number; loss of habitat is neither contributing to any decline in the bowhead whale population nor limiting their recovery; and existing regulations and management agreements provide adequate protection for this habitat.

Other comments emphasized the growing abundance of the stock, the lack of impact to the whales or their habitat from development, and the significant array of existing laws and regulations which already protect the bowhead whale and its habitat. They also said that any benefits to the bowhead by designation of critical habitat would be outweighed by economic costs.

*Response:* Few data exist describing the distribution and behavior of bowhead whales outside the Beaufort Sea. It is known that bowhead whales migrate each fall into Bering Sea waters of the U.S. and off the Kamchatka Peninsula. They are presumed to winter in the Bering Sea near the ice edge and within polynyas around St. Lawrence Island. The foraging habitat of bowhead whales appears to be highly dynamic, following changes in species composition of prey and oceanography. Feeding is known to be the principal activity of bowhead whales in the Canadian Beaufort Sea off the McKenzie River Delta, and bowheads continue to feed during their fall migration into the U.S. Beaufort, as well as during the spring migration. Inupiat Eskimos have regularly reported whale feeding behavior in the U.S. Beaufort Sea. The relative importance of foraging habitat within the U.S. Bering Sea to the

bowhead whale is difficult to assess. Stable-isotope research has indicated that the Bering Sea provides a substantial portion of the annual food requirements for these animals. Feeding behavior has been observed also among bowhead whales seen off the Siberian coast in late fall.

Breeding locations and periods are not precisely known, but are most likely to occur within the Bering Sea in winter or during spring migrations into the Chukchi and Beaufort Seas. Calving is likely to occur in the months of April, May, and June. This period also coincides with the spring migration.

The loss or degradation of habitat does not appear to be limiting the population growth of bowhead whales at this time. The Beaufort Sea contains large tracts of valuable mineral resources, particularly oil and gas deposits and, as a result, it has been extensively explored for the presence of oil and gas during the past few decades. Both the State of Alaska and the U.S. Department of the Interior are conducting lease sales in the Beaufort Sea. The Northstar Project began production in 2000 and is the first offshore oil production facility in the Beaufort Sea. A second major offshore production facility, Liberty, will be developed in 2003. Oil and gas exploration activities (seismic surveys and drilling) also occur in the Beaufort Sea.

The National Outer Continental Shelf leasing program of the MMS will occur in only two areas during the 5-year planning period 2003-2007, the Gulf of Mexico and Alaska (including the U.S. Beaufort Sea). The occurrence of the bowhead whale and the intensive exploratory and developmental activities of the oil and gas industry that occur in the habitat of the whale has generated significant amounts of attention for many years at every governmental level. Noise in the marine environment is a major habitat issue with respect to offshore development and bowhead whales, and certain noise sources have been shown to cause behavioral changes in individual whales. Current trends in this industry have been to further minimize or eliminate the introduction of any pollutants into the Beaufort Sea. Protective measures such as spill contingency plans and prevention measures, wastewater treatment, shore-based disposal of garbage and drill cuttings, and re-injection of drilling muds and production waters have been implemented to protect the environment.

There has been an increase in the underwater noise levels in the Beaufort

Sea as a result of activities such as shipping, ice-breaking, dredging, construction, drilling, and geophysical exploration (seismic). Monitoring studies in the nearshore Beaufort Sea during 1996–1998 demonstrated that nearly all bowhead whales avoid an area within 20 km of an active seismic source and avoidance or deflection by bowhead whales may begin at distances up to 35 km from the noise source. Although NMFS is aware that increases in the levels of noise may potentially have an adverse impact on bowhead whales, NMFS is unaware of any evidence that noise has altered the habitat to the point that it has had any significant impact on the recovery of this population.

*Comment 2:* One of the commenters stated that an assessment of economic impacts should be incorporated into our response to the petition.

*Response:* The ESA requires that, when designating an area as critical habitat, the Secretary of Commerce shall consider the probable economic and other impacts of the designation upon proposed or ongoing activities and may exclude areas from the designation based on the analysis. Because NMFS is not proposing to designate critical habitat, NMFS is not required to conduct an analysis of the economic impacts.

*Comment 3:* One of the commenters stated that a National Environmental Policy Act (NEPA) document (e.g. an Environmental Assessment or an Environmental Impact Statement) is necessary to document and assess those impacts not otherwise accounted for in the ESA process of designating critical habitat.

*Response:* NMFS is not proposing to designate critical habitat at this time; therefore, NMFS will not be preparing a NEPA document.

*Comment 4:* Another commenter also stated that the designation of the Beaufort Sea as critical habitat for bowhead whales is not warranted because courts have found that NMFS is not required to designate critical habitat for species listed under the ESA prior to 1978, and that NMFS should avoid unnecessary or duplicative regulations. The commenter noted that this population of bowhead whales is increasing in numbers despite subsistence harvest removals, and there is no evidence that efforts to conserve the population has been affected by a loss or degradation of habitat.

*Response:* NMFS agrees with the commenter's statement that the number of bowhead whales is increasing. The current population abundance estimate for this population of bowhead whales

is estimated at 8,200 individuals and it is increasing at a rate of 3.2 percent per year. There is no indication that degradation of habitat is having any negative impact on the current population. In addition, as provided in response to comment 1, the loss or degradation of habitat does not appear to be limiting the population growth of bowhead whales at this time. NMFS recognizes that the ESA gives the Service discretion in designating critical habitat for species listed prior to the 1978 amendments and has taken into consideration this factor, as well as the others mentioned by the commenter, in making its determination on this petition.

*Comment 5:* Several commenters supported the designation of critical habitat for the Western Arctic population of bowhead whales. They noted that bowhead whales may be present in the U.S. Beaufort Sea for up to 4 months during any given year, that calving occurs in these waters during the spring and open water seasons, and that the Beaufort Sea is known to whalers as an important bowhead whale feeding area during both spring and fall migrations. The commenters stated that these features of the area are essential to the conservation of the bowhead whale. They also stated that the Beaufort Sea is becoming increasingly developed, largely for oil and gas extraction and these actions have resulted in documented behavioral effects to bowhead whales. They anticipate future adverse effects due to the continued development and the possibility of oil spills. They further stated that the spring and fall migratory corridors, and waters landward, represent the minimum extent of critical habitat, and recommended that NMFS also consider a similar designation for the spring lead system of the Chukchi Sea. Finally, the commenters stated that NMFS must prepare a recovery plan for the bowhead whale.

Another commenter specifically mentioned the potential for impact from oil spills and noise on these whales, and the potential adverse consequences to the Inupiat Eskimo culture. They requested that NMFS honor tribal sovereignty by respecting their request to prohibit oil and gas development in the Beaufort Sea.

*Response:* NMFS is aware that bowheads use portions of the Beaufort Sea for calving, migration, and feeding, recognizes that these areas are important for bowhead whales, and understands that these areas are being used for energy exploration and development. However, NMFS maintains that these areas are protected adequately by

existing laws and regulations and do not need additional special management consideration or protection under the ESA.

NMFS reviewed the need for a recovery plan for the bowhead whale, and determined (Memorandum dated June 16, 1998) that a recovery plan was unnecessary due largely to the status of the stock and an agreement between NOAA and the AEWC to manage subsistence harvest of the population. This agreement and the IWC's Whaling Convention and Aboriginal Harvest Plan cover harvest management, research and enforcement.

NMFS recognizes its responsibilities to consult on a government to government basis with the affected tribal entities of the North Slope in this matter and the importance of local knowledge in our discussions with tribal entities. Much of the applied research associated with oil and gas activities is based on science developed through coordinated study planning, which supplements the scientific method with traditional knowledge and observations of the Inupiat Eskimos. Research plans and reports are often subject to peer review, and Native participation is normally sought when conducting this research.

*Comment 6:* One commenter challenged the Petitioner's statements as to the scope and adequacy of scientific research on the Western Arctic population of bowhead whales. The commenter stated that much is known about these whales, and that research has been directed to those activities with the greatest potential to impact the population. The commenter also stated that any assessment of this issue should consider that these bowhead whales encounter human interaction in other areas of their range; that members of the population spend most of their time outside of the U.S. Beaufort Sea, and that while feeding, sexual activity, and rearing occur in these waters, the U.S. Beaufort Sea is not the part of the bowhead's range in which these activities are most common.

*Response:* NMFS agrees that much is now known regarding this population of bowhead whales, particularly in the U.S. Beaufort Sea. NMFS considered the factors identified by the commenter in making its determination on this petition.

*Comment 7:* Another commenter stated that the Western Arctic population of bowhead whales has grown for many years, and may, in fact, now be considered recovered. They recommended that NMFS delay its determination on this petition until the final reports from the 2001 whale

census and the bowhead whale feeding study are completed. The commenter further stated that a recovered stock obviates any need to designate critical habitat necessary for their recovery and conservation. They note that Incidental Harassment Authorizations (IHAs) issued under the MMPA by NMFS have indicated that offshore oil and gas activities could result in behavioral changes to whales that would result in no more than a negligible impact to the whales. The commenter further stated that the IHA process has proven effective in protecting these whales from human-related activities in the petitioned area. Finally, the commenter stated that NMFS must comply with Executive Order 13211 entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" by preparing a statement of energy effects which describes any actions which may have any adverse effects on energy supply.

*Response:* NMFS agrees that the Western Arctic population of bowhead whales is increasing. The total visual count of 3,295 bowhead whales during the 2001 survey is encouraging, and provides some additional support that the stock may be recovering. Peer review of the results of the 2001 survey has not been completed; therefore, those results are still preliminary.

The bowhead whale receives protection under both the ESA and the MMPA. Both acts prohibit the unauthorized taking of a bowhead whale. The IHA process is an effective tool in protecting the bowhead whale and, particularly, in mitigating the effects of human-induced noise in the marine environment on the whales. Authorizations of small-take under the MMPA (usually in the form of an IHA) are routinely applied to any oil and gas activities in the Beaufort Sea which may adversely affect bowhead whales or their habitat. The required conditions and monitoring attached to these authorizations focus on anthropogenic noise and are designed to minimize behavioral disruption to bowhead whales.

Because NMFS is not proposing to designate critical habitat, compliance with Executive Order 13211 is not required.

*Comment 8:* This comment focused on a recent court decision (*Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)) as further support for the need to designate critical habitat for bowhead whales. The court found that the definition of "destruction or adverse modification" under 50 CFR 402.02 related to consultation under ESA section 7 is invalid. Therefore, the

court found that a decision not to designate critical habitat, which relied on the invalid definition, was in error. The commenter stated that the results of the on-going bowhead whale feeding study, while desirable, are not necessary in any determination of critical habitat. They reminded NMFS that oil activities can cause behavioral effects to bowhead whales, and that continued exploration and drilling off the coast of Alaska will exacerbate climate change (i.e., global warming). They noted the failure of industry to demonstrate their capability to recover spilled oil, and pointed to the precautionary principle in guiding any determination on whether to designate critical habitat.

*Response:* NMFS agrees that the results of the feeding study are not essential to a determination of this issue and recognizes the potential adverse effects of offshore development to bowhead whales. However, NMFS maintains that the combination of existing protections are adequate to protect this stock and its habitat and that the petitioned action is not necessary given existing management measures.

NMFS recognizes the benefits of applying a precautionary approach when faced with uncertainties. However, the information available concerning the biology of the bowhead whale and the effects of oil exploration development on these animals, allow NMFS to develop a reasoned and informed approach to manage and conserve this population. Many factors have the potential to adversely affect these whales; however, this population has shown continued growth even with annual subsistence removals and increased industrial activity within their range. NMFS is satisfied that the management measures currently in place control the potential effects of these activities and others.

*Comment 9:* Several other commenters supported the designation of critical habitat only if it can be certain not to impact subsistence hunting practices or harvest quotas.

*Response:* NMFS appreciates the comment and recognizes that this would be an issue of concern to a number of constituents. However, given the reasons provided earlier in this notice NMFS is not proposing to designate critical habitat. Therefore, concerns about possibly restricting subsistence hunting practices or harvest quotas do not apply.

#### Determination on the Petition

The biological and natural history information presented in the petition is largely factual and represents an

adequate review of existing data. The petition bases its recommendations for critical habitat designation on the following points: The petitioned area contains physical and biological features essential to the conservation of the bowhead whale because these animals migrate, calve, feed, and possibly breed in these waters; and the petitioned area may require special management considerations in view of various threats including oil and gas development, pollution, and vessel activity.

In evaluating the petition, NMFS first considered the requirements of the ESA. In this case, designating critical habitat for bowhead whales is discretionary because the species was listed under the ESA prior to 1978. Consequently, NMFS considered the petition under provisions of the APA (5 U.S.C. 553(e)), which provide, among other things, that agencies must give interested persons the right to petition for the issuance of a rule.

NMFS recognizes that this area is used by bowhead whales. However, these areas, especially the U.S. Beaufort Sea, do not require special management considerations or protection through the designation of critical habitat. This area is currently managed through a combination of the ESA, the Marine Mammal Protection Act and the Fish and Wildlife Coordination Act (FWCA). In addition to managing the incidental taking of bowhead whales, the MMPA includes provisions that can be used to protect the habitat of certain marine mammals, including bowhead whales (e.g., 16 U.S.C. 1382(e)).

Federal activities in the petitioned region generally concern offshore oil and gas exploration and development. Under the ESA and the FWCA, NMFS consults with the Minerals Management Service, the Army Corps of Engineers (Corps), and the Environmental Protection Agency (EPA) regarding the effects of such development on the Outer Continental Shelf (OCS) or other waters through intensive consultation processes. NMFS reviews actions permitted by the Corps and EPA and regularly conditions associated permits through its consultative role under the FWCA.

Formal ESA consultation has occurred for every offshore development project on the OCS. NMFS completed a comprehensive ESA Section 7 consultation in 2000 on the effects of the offshore oil and gas leasing and exploration on the bowhead whale. The resulting biological opinion concluded that those actions were not likely to jeopardize the continued existence of the bowhead whale. Although NMFS

does not treat the criteria for evaluating the destruction or adverse modification of designated critical habitat and jeopardy as the same, these ESA consultations in conjunction with protective measures under the MMPA and FWCA provide the means to protect the habitat of this population of bowhead whales.

All actions, including non-Federal activities, which may kill, injure, or harm a bowhead whale are in violation of Federal law unless specifically authorized. NMFS routinely considers applications for authorizations under the MMPA for the incidental taking of bowhead whales by harassment, largely due to noise. The authorization process for these permits is comprehensive, involving close coordination with affected subsistence users and Native governments, preparation of scientific monitoring studies, and peer-review of results. Further, these authorizations require that an activity have no more than a negligible impact to the stock, and the activity cannot have an unmitigable adverse effect on the availability of the marine mammal to subsistence users. These standards provide further assurance that the activities do not have significant consequence to bowhead whales and their habitat.

Existing laws and practices provide the means to adequately protect the habitat of the bowhead whale within the U.S. Beaufort Sea. They also provide a legal framework by which any future needs for such protection could be met.

NMFS considered the known, anticipated or potential effects of development on bowhead whale habitat in the review of this petition. NMFS has

no data to indicate that the physical alteration of the Chukchi or Beaufort Seas has affected the conservation of bowhead whales. In-water noise has increased with an increase in offshore development and vessel traffic. However, NMFS will continue to work with the permitting Federal agencies and with industry through the MMPA small-take authorization process to monitor the effect of noise on bowhead whales. This monitoring is intended to identify changes in whale behavior and distribution. As a result of the many informal and formal ESA section 7 consultations, as well as the other management measures and processes discussed, the provisions contained in authorizations of project activities during project planning have mitigated potential effects to the bowhead whales and their habitat.

NMFS also has considered the status and health of the Western Arctic population of bowhead whales in making this determination. The Western Arctic population of bowhead whales appears to be recovering and has demonstrated that it is capable of recovering from the effects of commercial whaling. The current best estimate for the stock abundance is 8,200 animals with an estimated annual population growth rate of 3.2 percent. While this 1996 estimate is rather dated, recent, preliminary information from the 2001 survey indicates that the abundance has continued to increase. NMFS intends to initiate a formal ESA status review after peer review of the results of the 2001 survey.

In making its determination on whether to designate critical habitat for

bowhead whales, NMFS assessed the current status of the population, all of the factors known to affect the habitat of bowhead whales, and whether existing management measures are adequate to protect that habitat. Based on this assessment, NMFS is exercising its discretion not to propose designation of critical habitat for this population of bowhead whales for the following reasons: (1) the decline and reason for listing the species was overexploitation by commercial whaling, and habitat issues were not a factor in the decline; (2) there is no indication that habitat degradation is having any negative impact on the increasing population in the present; (3) the population is abundant and increasing; and (4) existing laws and practices adequately protect the species and its habitat.

NMFS will continue to monitor this stock and protect the bowhead whale and its habitat under existing authorities and agency actions, as described in this notice. NMFS will continue to review the appropriateness of designating critical habitat during all subsequent reviews of the status of this species. These reviews will also consider whether there is a need for any additional management measures in order to conserve the Western Arctic stock of bowhead whales.

**Authority:** 16 U.S.C. 1513, *et seq.*

Dated: August 26, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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